

# Tampering & Aftermarket Defeat Devices

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# The Clean Air Act

- ▶ The Clean Air Act (CAA) was enacted by Congress in 1970, and amended in 1977 and 1990.
- ▶ Title II of the CAA – Mobile Source Provisions
  - ▶ On-highway (motor vehicles and motor vehicle engines) and nonroad (nonroad vehicles and nonroad engines) are regulated.
  - ▶ “Motor Vehicle” includes all cars, trucks, motorcycles
  - ▶ “Nonroad” includes construction equipment, lawn and garden, generators, marine, locomotive, recreational vehicles
- ▶ Today’s discussion is focused on aftermarket parts and service.
- ▶ CAA § 203 contains the following prohibitions (among others) for which EPA may seek injunctive relief and a penalty.



# CAA Title II Prohibitions: Defeat Devices

- ▶ The following acts and the causing thereof are prohibited –
  - ▶ For any person to manufacture or sell, or offer to sell, or install, a part or component for a motor vehicle, where
    - ▶ A principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, and
    - ▶ The person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).



# CAA Title II Prohibitions: Tampering

- ▶ The following acts and the causing thereof are prohibited –
  - ▶ For anyone to remove or render inoperative an emission control component on a certified motor vehicle or engine prior to sale or delivery to ultimate purchaser, or
  - ▶ For anyone to knowingly remove or render inoperative any emission control component on a certified motor vehicle or engine after sale and delivery to the ultimate purchaser.

CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A).



# Defeat Device and Tampering Examples

- ❖ Alterations to Fueling, Timing Strategy
- ❖ DPF Delete
- ❖ EGR Delete
- ❖ SCR Delete
- ❖ Alterations to OBD
- ❖ Software and Hardware



# Memo 1A - Tampering Enforcement Policy

- ▶ Interim Tampering Enforcement Policy Memorandum 1A- (6/25/74) – (Memo 1A)
- ▶ Memo 1A allows the sale and use of aftermarket parts when an individual or company has a “reasonable basis” to believe their actions do not increase emissions
- ▶ EPA issues no approvals under Memo 1A



# Memo 1A Requirements

- ▶ In order to prevent and protect yourself from violations of the prohibitions on tampering and defeat devices, you should have in your records:
  - ▶ Emission test results from tests conducted in accordance with EPA's federal test procedure (FTP) showing that similar vehicles meet the standards for the vehicles' useful lives *or*
  - ▶ An EPA Aftermarket Parts Certificate
  - ▶ Generally, the testing required for a CARB EO is the same as the testing required under Memo 1A because the test procedures are usually the same
- ▶ Vehicle needs to perform the same on- and off-cycle



# Criminal Prohibitions

- ▶ It is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any “monitoring device or method” required under the CAA.
  - ▶ CAA § 113(c)(2)(C), 42 U.S.C. § 7413(c)(2)(C).
- ▶ Vehicle Onboard Diagnostics (OBD) are a “monitoring device or method” required by the CAA.





# Myth or Fact?

- ▶ “I am protected from selling a defeat device or tampering as long my customers use the modified vehicles for *competition use only*”

**MYTH!**

- ▶ Under the CAA there is no “competition only” exemption for motor vehicles or motor vehicle engines. If it’s an EPA-certified motor vehicle, the CAA prohibits parts or service that increase emissions.
- ▶ EPA’s focus is not on vehicles built or used exclusively for racing, but on companies that don’t play by the rules and that make and sell products that disable pollution controls on motor vehicles used on public roads. These unlawful defeat devices pump dangerous and illegal pollution into the air we breathe.

